

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**PANERA, LLC AND PANERA BREAD COMPANY,
AND MANNA DEVELOPMENT GROUP, LLC,
AND BREAD OF LIFE, LLC D/B/A PANERA BREAD,
Joint Employers and/or Single Employer**

and

**Cases 07-CA-136197
07-CA-147774**

**LOCAL 70, BAKERY, CONFECTIONERY,
TOBACCO WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO, CLC**

ORDER¹

The petition of Panera, LLC to revoke subpoena duces tecum B-1-026469 is denied. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Petitioner has failed to establish any other legal basis for revoking the subpoena.²

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² Member Miscimarra does not agree with the Board's revised standard for assessing joint-employer status under the Act for the reasons explained more fully in his dissenting opinion in *BFI Newby Island Recyclery (Browning-Ferris Industries of California)*, 362 NLRB No. 186, slip op. at 21-50 (2015) (Members Miscimarra and Johnson, dissenting). Moreover, consistent with Sec. 11(1) of the Act and Sec. 102.31(b) of the Board's Rules and Regulations, as stated in Member Miscimarra's dissent in *Dolchin Pratt, LLC d/b/a Jimmy John's Gourmet Sandwiches*, 05-CA-135334 (Nov. 6, 2015), he believes that a subpoena seeking documents pertaining to an alleged joint-employer and/or single-employer status of a charged party "requires more. . . than merely stating the name of a possible single or joint employer on the face of the charge." *Id.* at 3. In particular, the General Counsel must be able to articulate "an objective factual basis supporting such an inquiry." *Id.* at 4–5. Cf. Casehandling Manual Sec. 10054.4 (stating that "additional and more complete evidence, including all relevant documents," should be obtained if "consideration of the charging party's evidence and the preliminary information from the charged party *suggests a prima facie case*") (emphasis added). In the instant case, the preliminary information includes one or more agreements between Panera and one or

See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., December 8, 2015

PHILIP A. MISCIMARRA,	MEMBER
KENT Y. HIROZAWA,	MEMBER
LAUREN McFERRAN,	MEMBER

more of the charged parties in which Section 4.03 states that a “Policy Manual” will be provided by Panera, and that the other party is required “to comply fully with all mandatory standards, specifications, and operating procedures and other obligations contained in the Policy Manual.” Additionally, Panera has advised the Region that no single “Policy Manual” contained all of its policies; Panera has offered to provide “examples” of the applicable policies; and the subpoena seeks copies of the applicable operational policies, and copies of other documents provided by Panera pursuant to Section 4.03 in the agreement(s) described above. In these circumstances, Member Miscimarra believes that an adequate basis exists for the subpoena’s requests and the record does not support a finding that compliance with the requests would be unduly burdensome.